IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant:	MORELLI, ET AL.	Examiner:	JAGOE, DONNA A.
Serial No.:	10/680,703	Group Art Unit:	1614
Filed:	OCTOBER 17, 2003	Docket No.:	2098USU1
Conf No.	2633		
Title:	ACIDIFIED CHLORITE COMPOSITIONS CONTAINING NITROGENOUS STABILIZERS AND SYSTEMS AND METHODS RELATED THERETO		

FILED EFS-WEB

APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

This is an appeal from the Final Rejection mailed April 27, 2009, in which claims 1-16, 18, 19, 23-28 and 31-37 were rejected. A Request for Continued Examination and Response to Final Office Action was filed on July 21, 2009. No claim amendments were made therein. A nonfinal Office Action was mailed on October 1, 2009 again rejecting all remaining claims, 1-16, 18, 19, 23-28 and 31-37. The Notice of Appeal was filed on December 22, 2009 making this Appeal Brief due February 22, 2010.

The $540 large entity fee under 37 C.F.R. §41.20(b)(2) for filing a brief in support of an appeal has been charged to a credit card. Any underpayment should also be charged (and any overpayment should be credited) to Deposit Account No. 501257.

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REAL PARTY IN INTEREST

The real party in interest is Ecolab Inc., by virtue of an assignment recorded at reel/frame number 015306/0585. Ecolab is a Delaware corporation headquartered in St. Paul, Minnesota. Further information regarding Ecolab Inc. is available at http://www.ecolab.com.

RELATED APPEALS AND INTERFERENCES

There are no other prior and pending appeals, interferences or judicial proceedings known to Appellant, the Appellant's legal representative, or assignee Ecolab Inc. which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

A Final Rejection was mailed in this case on April 27, 2009. A Request for Continued Examination and Response to Final Office Action was filed on July 21, 2009. A nonfinal Office Action was mailed on October 1, 2009 rejecting claims 1-16, 18-28 and 31-48. Claims 40 and 41 were objected to. All claim amendments have been entered. Upon filing this appeal no claim amendments were made that have not been entered .

No claims are allowed. Claims 1-16, 18, 19, 23-28 and 31-37 stand rejected. All of these rejections and objections are appealed. Claims 17 and 29-30 are cancelled. Claims 20-22, 38-48 were withdrawn from consideration. A clean copy of the appealed claims, 1-16, 18, 19, 23-28, 31-37 is reproduced in the Claims Appendix.

STATUS OF AMENDMENTS

All of the amendments made by Appellant have been entered and are included in the claims as listed in the Claims Appendix. No amendments were made that have not been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

Claim	**Support is found in the Specification *at least* on:**
1. A two-part disinfecting system comprising a first part and a second part adapted to be mixed to yield an aqueous acidic disinfecting composition,	Page 2 line 27 through page 3 line 4
wherein the first part comprises a chlorite and the second part comprises an acid,	Page 2 lines 1-2
and the first part, the second part, or both first and second parts further comprise a nitrogenous stabilizer and an oxidizable colorant present in the first part, the second part, or both the first and second parts	Page 2 lines 2-6, page 7 lines 9-10
wherein the oxidizable colorant consists of a drug and cosmetic colorant, an externally applied drug and cosmetic colorant, a food, drug, and cosmetic colorant or mixtures thereof,	Page 7 lines 17-28
and wherein the system is substantially free of nonoxidizable colorants,	Examples 1, 2 and 5 found on pages 18-22 and pages 24-25
and further wherein the system minimizes the production of chlorine dioxide formation as compared to if the nitrogenous stabilizer were absent.	Page 3 lines 9-11
2. The system of claim 1 wherein the nitrogenous stabilizer has a Reduced Chlorite Demand Factor of 2 or greater.	Page 12 lines 21-26

3. The system of claim 1 wherein the nitrogenous stabilizer has a Reduced Chlorite Demand Factor of 3 or greater.	Page 29 lines 15-16
4. The system of claim 1 wherein the nitrogenous stabilizer has a Reduced Chlorite Demand Factor of 4 or greater.	Page 29 lines 15-16
5. The system of claim 1 wherein the nitrogenous stabilizer contains a primary amine.	Page 8 lines 17-23
6. The system of claim 1 wherein the nitrogenous stabilizer is monoethanolamine, ethylenediamine, diethylenetriamine, triethylenetetraamine, polyethyleneimine, glycine, alanine, serine, aspartate, glutamate, aniline, *para*-aminobenzoic acid, aniline sulfonic acid, methyl anthranilate, anthranilic acid, phenylenediamine, sulfamic acid, N-methysulfamic acid, aminomethylsulfonic acid, taurine, methylsulfonamide, sulfanilamide, benzenesulfonamide, toluenesulfonamide, or mixtures thereof.	Page 8 line 7 through page 9 line 25
7. The system of claim 1 wherein the nitrogenous stabilizer is present in the first part, the second part, or both the first and second parts in an amount such that, when the first part and second part are combined, it is present within the disinfecting composition at a	Page 13 lines 16-19

concentration ranging from about 0.001% to about 20% by weight.	
8. The system of claim 1 wherein the nitrogenous stabilizer is present in the first part, the second part, or both the first and second parts in an amount such that, when the first part and second part are combined, it is present within the disinfecting composition at a concentration ranging from about 0.05% to about 10% by weight.	Page 13 lines 16-19
9. The system of claim 1 wherein the nitrogenous stabilizer is present in the first part, the second part, or both the first and second parts in an amount such that, when the first part and second part are combined, it is present within the disinfecting composition at a concentration ranging from about 0.1% to about 5% by weight.	Page 13 lines 16-20
10. The system of claim 1 wherein the chlorite is a metal chlorite.	Page 4 lines 18-20, Page 5 lines 21-22, and claim 10 as originally filed
11. The system of claim 10 wherein the metal chlorite is an alkali or alkaline earth metal chlorite.	Page 5 lines 21-22
12. The system of claim 10 wherein the metal chlorite is sodium chlorite or potassium	Page 5 lines 21-22

chlorite.	
13. The system of claim 10 wherein the metal chlorite is sodium chlorite.	Page 5 lines 21-22
14. The system of claim 1 wherein the chlorite is present in the first part in an amount such that, when combined with the second part, it is present within the disinfecting composition at a concentration ranging from about 0.005% to about 3% by weight.	Page 5 lines 22-25
15. The system of claim 1 wherein the chlorite is present in the first part in an amount such that, when combined with the second part, it is present within the disinfecting composition at a concentration ranging from 0.05% to 0.5% by weight.	Page 5 lines 22-26
16. The system of claim 1 wherein the chlorite is present in the first part in an amount such that, when combined with the second part, it is present within the disinfecting composition at an concentration ranging from 0.1% to 0.4% by weight.	Page 5 lines 22-26
18. The system of claim 1 wherein the acid is an organic acid.	Page 5 line29

19. The system of claim 18 wherein the organic acid is glycolic acid, lactic acid, malic acid, mandelic acid, citric acid, tartaric acid, adipic acid, succinic acid, malonic acid, heptanoic acid, octanoic acid, nonanoic acid, benzoic acid, salicylic acid, gluconic acid, or a mixture thereof.	Page 5 line29 through page 6 line 4
23. The system of claim 1 wherein the acid is present in the second part in an amount such that, when combined with the first part, it is present within the disinfecting composition at a concentration ranging from about 0.1% to about 10% by weight.	Page 7 lines 1-4
24. The system of claim 1 wherein the acid is present in the second part in an amount such that, when combined with the first part, it is present within the disinfecting composition at a concentration ranging from 0.5% to 5.0% by weight.	Page 7 lines 1-4
25. The system of claim 1 wherein the acid is present in the second part in an amount such that, when combined with the first part, it is present within the disinfecting composition at an concentration ranging from 1.0% to 3.0% by weight.	Page 7 lines 1-4

26. The system of claim 1 wherein the acid is present in the second part in an amount such that, when combined with the first part, the pH of the disinfecting composition is below 5.	Page 7 lines 4- 8
27. The system of claim 1 wherein the acid is present in the second part in an amount such that, when combined with the first part, the pH of the disinfecting composition ranges from 1.5 to 5.	Page 7 lines 4- 8
28. The system of claim 1 wherein the acid is present in the second part in an amount such that, when combined with the first part, the pH of the disinfecting composition ranges from 2.3 to 3.5	Page 7 lines 4- 8
31. The system of claim 1 wherein the oxidizable colorant is a drug and cosmetic colorant, an externally applied drug and cosmetic colorant, a food, drug and cosmetic colorant, or a mixture thereof.	Page 7 lines 9-22
32. The system of claim 30 wherein a single oxidizable colorant is present in the second part.	Page 7 lines 9-10
33. The system of claim 1 wherein the first	Page 19 lines 20-21 and page 22 lines 16-19

part and the second part are adapted to be combined in equal volumes.	
34. The system of claim 1 wherein both the first part and the second part are in the form of an aqueous solution, emulsion, microemulsion, cream or gel.	Page 5 lines 10-12
35. The system of claim 1 wherein at least one of the first part or the second part is in a non-aqueous or solid form, or is adapted to be diluted by or dissolved in water prior to combination of the first part and the second part.	Page 5 lines 12-15
36. The system of claim 1 wherein the first part, the second part, or both the first and second parts further comprise a textural modifier, wetting agent, thickening agent, skin conditioner, healing agent, film-forming polymer, surfactant, preservative, or a mixture thereof.	Page 13 lines 23-page 14 line 13
37. A disinfecting composition formed by combining the first part and the second part of the two-part disinfecting system of claim 1.	Page 17 lines 2-5

GROUNDS OF REJECTION FOR REVIEW ON APPEAL

The grounds of rejection for review on appeal are the following:

I. Whether claims 1-16, 18, 19, 23-28 and 31-37 were improperly rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written requirement.

II. Whether claims 1-16, 10-13, 18, 19, 26-28, 31-34 and 37 were improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over Roozdar (U.S. Patent No. 5,380,518) and Morelli et al. (U.S. Patent No. 6,524,624).

III. Whether claims 1-6, 10-13, 31-35 and 37 were improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over Pastore (U.S. Patent No. 6,071,483) and Morelli et al. (U.S. Patent No. 6,524,624).

IV. Whether claims 1-16, 18, 19, 23-28 and 31-37 were improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over Richter (U.S. Patent No. 6,379,685).

ARGUMENT

I. REJECTION OF CLAIMS 1-16, 18, 19, 23-28 AND 31-37 UNDER 35 U.S.C. § 112, FIRST PARAGRAPH

The first issue on appeal is whether claims 1-16, 18, 19, 23-28 and 31-37 were improperly rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written requirement.

The Office objected to the statement presented in claim 1, “substantially free of nonoxidizable colorants,” stating that it is a concept not present in the specification as originally filed. Appellants respectfully disagree with the Office and appeal this rejection.

The fact that the term “substantially free of nonoxidizable colorants” was not exactly used in the specification does not necessarily mean that support is lacking in the original specification. The first paragraph of 35 U.S.C. § 112 provides:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The "written description" requirement requires the inventor to clearly convey to those skilled in the art through the specification the information that the applicant has invented as the specific subject matter of the claims.[1] Appellants have satisfied this requirement. As pointed out by the Office, Appellants’ specification provides inclusion of oxidizable colorants and the Examples provide compositions including oxidizable colorants. By their nature oxidizable colorants fade upon exposure to oxygen. Appellants’ examples are replete with color stability data. The color stability or fade of the oxidizable colorants in various inventive compositions is shown in

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[1] *In re Wertheim*, 541 F.2d 257, 262, 191 USPQ 90, 96 (CCPA 1976).

Examples 1, 2 and 5.[2] The skilled artisan readily appreciates that not only do these examples include the positively mentioned *oxidizable* colorant but these examples do not and could not include a *nonoxidizable* colorant. Inclusion of a *nonoxidizable* colorant would obscure or hide any fading or instability of the *oxidizable* colorants used in the examples. Although Appellants never expressly use the term, "substantially free of a nonoxidizable colorant," Appellants have provided support in the specification for such a claim element.

The Office contended that because Appellants' originally filed specification lacks the express term used in the claims, "substantially free of a nonoxidizable colorant," this automatically results in a failure to provide support in the written description of the invention. Appellants disagree with the Office's contention. Applicant does not have to describe the subject matter claimed in the specification using exactly the same words used in the claims but the description must be sufficiently clear to allow one of ordinary skill to recognize that the applicant invented what is claimed.[3] Such is the case with the present application. Appellants admit the specification does not use the exact words as provided in the claims. As Applicant has referenced, the Examples include colorant stability measurements. Only when nonoxidizable colorants are substantially excluded from the invention will color fade of oxidizable colorants be apparent. The skilled artisan will readily appreciate that nonoxidizable colorants are substantially absent from the Example compositions. As addressed in the previous paragraph, and contrary to the Office's contention, Appellants have provided adequate written support for the term "substantially free of a nonoxidizable colorant" and one of ordinary skill can recognize that Appellants invented what is claimed.

By amending the claims to expressly exclude a *nonoxidizable* colorant, Appellants have merely recited something that was included in the specification as originally filed. By disclosing in a patent application a device that inherently has a property, operates according to a theory or has an advantage, a patent application necessarily discloses that function, theory or advantage, even though it says nothing explicit concerning it. Furthermore, the application may later be amended to recite the function, theory or advantage without introducing prohibited new matter.[4] Appellants' invention excludes nonoxidizable colorants as is evidenced by the colorant fading data provided in Examples 1, 2, and 5. Although it is not expressly stated, it is apparent to the skilled artisan that any fading measurements of compositions containing oxidizable colorants necessarily must exclude *nonoxidizable* colorants otherwise the non-fading *nonoxidizable* colorants would conceal any fading of the *oxidizable* colorants. In the case at hand it is apparent that Appellants possessed the idea of a composition "substantially free of nonoxidizable colorants" upon filing the present application. Furthermore, this is readily apparent to the skilled artisan as required by 35 U.S.C. §112, first paragraph.

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[2] See pages 18-22 and 24-25 of the Specification as filed.

[3] *In re Lukach*, 442 F.2d 967, 969, 169 USPQ 795, 796 (CCPA 1971); *In re Gosteli*, 872 F.2d 1008, 1012, 10 USPQ2d 1614, 1618 (Fed. Cir. 1989).

In denying Appellants' ability to narrow the claims because there is no express support in the specification would be to demand that patent Appellants be all knowing and foretell what prior art be cited so that they can layer their claim scope accordingly throughout the disclosure. Appellants would have to "either prophetically divine what the art contains, or they must lay down a barrage of claims, starting with the widest and proceeding by the successive incorporation of more and more detail, until all combinations have been exhausted."[5] In the case at hand Appellants would have had to expressly recite an exhaustive list of components that the invention does not include in addition to that which is included. To require such a recitation would be ridiculous. Avoidance of excessively long recitations of exclusions is why the law provides for amending the claims to include or exclude certain elements when it is apparent that the inventors were in possession of the claimed invention at the time of filing. As described above, at the time of filing Appellants clearly had possession of the concept of a system "substantially free of nonoxidizable colorants" and this is apparent to a skilled artisan. No new matter was added with the claim amendment. Appellants hereby request reversal of the rejection based upon 35 U.S.C. §112, first paragraph.

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[4] *In re Reynolds*, 443 F.2d 384, 170 USPQ 94 (CCPA 1971); *In re Smythe*, 480 F. 2d 1376, 178 USPQ 279 (CCPA 1973).

[5] *In re Driscoll*, 195 USPQ 434, 438; 562 F.2d 1245, 1249 (1977).

II. REJECTION OF CLAIMS 1-16, 10-13, 18, 19, 26-28, 31-34 AND 37 UNDER 35 U.S.C. § 103(A) AS BEING UNPATENTABLE OVER U.S. PATENT NO. 5,380,518 TO ROOZDAR AND U.S. PATENT NO. 6,524,624 TO MORELLI ET AL.

The second issue on appeal is whether claims 1-16, 10-13, 18, 19, 26-28, 31-34 and 37 were improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over Roozdar (U.S. Patent No. 5,380,518) and Morelli et al. (U.S. Patent No. 6,524,624).

Appellants assert that combination of these references is incorrect. It is improper to combine references where the references teach away from their combination.[6] Roozdar teaches away from the objective of Morelli '624. Roozdar aims to significantly *increase* the amount of chlorine dioxide that is produced to in turn minimize residual chlorite ion (see Roozdar Col. 4 lines 20-23). Also note the title of Roozdar, "Method for the Production of Chlorine Dioxide." In contrast, Morelli '624 aims to minimize the amount of chlorine dioxide formed. Due to the reference's opposing objectives, it is inappropriate to combine Roozdar and Morelli.

Roozdar states in Column 5 lines 9 – 18 that the unexpected result of the invention is faster and more efficient production of chlorine dioxide than a similar system without a disproportionating agent (hydroxyl free aldehyde). Contrast this to the invention at hand where color loss is proportional to the rate and level of chlorine dioxide generation and where color loss is undesirable. Roozdar does not include a colorant. Nothing in Roozdar suggests any need for a colorant. This begs the question why the skilled artisan would be motivated to add a colorant to Roozdar or to combine with a reference including a colorant (Morelli)? Even if a colorant were added to Roozdar (for reasons Appellants cannot fathom), practicing Roozdar's invention would result in rapid color loss. Therefore, not only do Morelli and Roozdar teach away from each other, Roozdar alone teaches away from the claimed invention.

Appellants' claims include the element that chlorine dioxide generation is minimized. The skilled artisan would not look to art teaching how to maximize chlorine dioxide formation (Roozdar) when formulating a composition aimed at minimizing generation of the dangerous gas. Appellants' claims render this combination improper. Appellants hereby request reversal of the rejection based on the improper combination of Roozdar and Morelli and solicit allowance of the rejected claims.

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[6] *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983).

III. REJECTION OF CLAIMS 1-6, 10-13, 31-35 AND 37 UNDER 35 U.S.C. § 103(A) AS BEING UNPATENTABLE OVER U.S. PATENT NO. 6,071,483 TO PASTORE AND U.S. PATENT NO. 6,524,624 TO MORELLI ET AL.

The third issue on appeal is whether claims 1-6, 10-13, 31-35 and 37 were improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over Pastore (U.S. Patent No. 6,071,483) and Morelli et al. (U.S. Patent No. 6,524,624).

Combination of Pastore with Morelli was improper because the references teach away from each other. Pastore, similarly to Roozdar above, teaches away from Morelli '624. It is improper to combine references where the references teach away from their combination.[7] Pastore produces chlorine dioxide and produces it in such copious amounts that a vessel is required to neutralize the noxious gas. In contrast, Morelli's '624 patent aims to *minimize* production of chlorine dioxide. As with Roozdar, the title of Pastore suggests quite the opposite of Morelli's objective to minimize chlorine dioxide formation. Pastore is entitled, "Reactor Vessel and Process for Preparing a Controlled-Dosage Chlorine Dioxide Solution."[8] Due to these diametrically opposed goals, the Office improperly combined Pastore with Morelli.

A prior art reference must be considered in its entirety, that is, as a whole.[9] The intended purpose of the Pastore reference is replete throughout the reference. Appellants agree that the claims describe the intent of the Pastore invention; however, the claims only serve to further support Appellants' contention that Pastore teaches away from Morelli. Quite simply, Pastore aims to produce chlorine dioxide.

As recited above with respect to the Roozdar/Morelli rejection, not only do Pastore and Morelli teach away from each other, but Appellants' claim 1 includes the element that chlorine dioxide generation is minimized. One skilled in the art would not look to Pastore that teaches how to prepare a chlorine dioxide solution when aiming to *minimize* generation of chlorine dioxide. Appellants' claims also render this combination improper.

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[7] *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983).

[8] US Patent 6,071,483 to Pastore

[9] *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

Since the combination of Pastore and Morelli is improper Appellants solicit the Honorable Board to reverse the §103 rejection based on the combination of these references and hereby request allowance of the rejected claims.

IV. REJECTION OF CLAIMS 1-16, 18, 19, 23-28 AND 31-37 UNDER 35 U.S.C. § 103(A) OVER U.S. PATENT NO. 6,379,685 TO RICHTER.

The fourth issue on appeal is whether claims 1-16, 18, 19, 23-28 and 31-37 were improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over Richter (U.S. Patent No. 6,379,685).

Richter US 6,379,685 was relied upon to reject claims 1-16, 18, 19, 23-28 and 31-37 under 35 USC §103(a). Appellants' claims overcome the rejection based upon Richter. Appellants' claims state that the composition is substantially free of nonoxidizable (non-fading) colorants. None of the cited references include this patentable feature of the invention. The Office noted that Richter discloses, "the optional addition of a chromophore, dye or pigment (oxidizable colorant)."[10] What the all of the references fail to disclose is the *absence* of nonoxidizable colorants. While the references may teach *inclusion* of an oxidizable (fading) colorant, without excluding nonoxidizable colorants from the composition the value of the fading colorant is completely obscured thereby rendering inclusion of the fading colorant irrelevant. Appellants direct the Board's attention to the arguments included above with respect to the §112 rejections. Appellants have shown that such claim limitation ("substantially free of nonoxidizable colorants") is supported in the specification and that the description is sufficiently clear to allow one of ordinary skill to recognize that the applicant invented what is claimed. Appellants request reversal of the obviousness rejection based upon Richter and allowance of the claims.

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[10] Office action mailed October 1, 2009 on page 12 lines 21-22.

CONCLUSION

In view of the above, Appellants submit, based on the present facts and applicable law, that Appellants' invention as claimed is patentable. It is earnestly requested that the Honorable Board reverse prior art-based rejections over the cited references and allow all of the pending claims.

No other fee is believed to be required in connection with the filing of this amendment. Should any other fee be required, the Commissioner is authorized to charge the above-referenced deposit account and thereafter notify us of the same.

43896
PATENT TRADEMARK OFFICE

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CLAIMS APPENDIX

Listing of Claims

1. A two-part disinfecting system comprising a first part and a second part adapted to be mixed to yield an aqueous acidic disinfecting composition, wherein the first part comprises a chlorite and the second part comprises an acid, and the first part, the second part, or both first and second parts further comprise a nitrogenous stabilizer and an oxidizable colorant present in the first part, the second part, or both the first and second parts wherein the oxidizable colorant consists of a drug and cosmetic colorant, an externally applied drug and cosmetic colorant, a food, drug, and cosmetic colorant or mixtures thereof, and wherein the system is substantially free of nonoxidizable colorants, and further wherein the system minimizes the production of chlorine dioxide formation as compared to if the nitrogenous stabilizer were absent.

2. The system of claim 1 wherein the nitrogenous stabilizer has a Reduced Chlorite Demand Factor of 2 or greater.

3. The system of claim 1 wherein the nitrogenous stabilizer has a Reduced Chlorite Demand Factor of 3 or greater.

4. The system of claim 1 wherein the nitrogenous stabilizer has a Reduced Chlorite Demand Factor of 4 or greater.

5. The system of claim 1 wherein the nitrogenous stabilizer contains a primary amine.

6. The system of claim 1 wherein the nitrogenous stabilizer is monoethanolamine, ethylenediamine, diethylenetriamine, triethylenetetraamine, polyethyleneimine, glycine, alanine, serine, aspartate, glutamate, aniline, para-aminobenzoic acid, aniline sulfonic acid, methyl anthranilate, anthranilic acid, phenylenediamine, sulfamic acid, N-methysulfamic acid, aminomethylsulfonic acid, taurine, methylsulfonamide, sulfanilamide, benzenesulfonamide, toluenesulfonamide, or mixtures thereof.

7. The system of claim 1 wherein the nitrogenous stabilizer is present in the first part, the second part, or both the first and second parts in an amount such that, when the first part and second part are combined, it is present within the disinfecting composition at a concentration ranging from about 0.001% to about 20% by weight.

8. The system of claim 1 wherein the nitrogenous stabilizer is present in the first part, the second part, or both the first and second parts in an amount such that, when the first part and second part are combined, it is present within the disinfecting composition at a concentration ranging from about 0.05% to about 10% by weight.

9. The system of claim 1 wherein the nitrogenous stabilizer is present in the first part, the second part, or both the first and second parts in an amount such that, when the first part and second part are combined, it is present within the disinfecting composition at a concentration ranging from about 0.1% to about 5% by weight.

10. The system of claim 1 wherein the chlorite is a metal chlorite.

11. The system of claim 10 wherein the metal chlorite is an alkali or alkaline earth metal chlorite.

12. The system of claim 10 wherein the metal chlorite is sodium chlorite or potassium chlorite.

13. The system of claim 10 wherein the metal chlorite is sodium chlorite.

14. The system of claim 1 wherein the chlorite is present in the first part in an amount such that, when combined with the second part, it is present within the disinfecting composition at a concentration ranging from about 0.005% to about 3% by weight.

15. The system of claim 1 wherein the chlorite is present in the first part in an amount such that, when combined with the second part, it is present within the disinfecting composition at a concentration ranging from 0.05% to 0.5% by weight.

16. The system of claim 1 wherein the chlorite is present in the first part in an amount such that, when combined with the second part, it is present within the disinfecting composition at an concentration ranging from 0.1% to 0.4% by weight.

17. (Cancelled)

18. The system of claim 1 wherein the acid is an organic acid.

19. The system of claim 18 wherein the organic acid is glycolic acid, lactic acid, malic acid, mandelic acid, citric acid, tartaric acid, adipic acid, succinic acid, malonic acid, heptanoic acid, octanoic acid, nonanoic acid, benzoic acid, salicylic acid, gluconic acid, or a mixture thereof.

20. (Withdrawn) The system of claim 1 wherein the acid is an inorganic acid.

21. (Withdrawn) The system of claim 20 wherein the inorganic acid is sulfuric acid, sodium bisulfate, phosphoric acid, hydrochloric acid, nitric acid, or a mixture thereof.

22. (Withdrawn) The system of claim 1 wherein the acid is a mixture of an organic acid and an inorganic acid.

23. The system of claim 1 wherein the acid is present in the second part in an amount such that, when combined with the first part, it is present within the disinfecting composition at a concentration ranging from about 0.1% to about 10% by weight.

24. The system of claim 1 wherein the acid is present in the second part in an amount such that, when combined with the first part, it is present within the disinfecting composition at a concentration ranging from 0.5% to 5.0% by weight.

25. The system of claim 1 wherein the acid is present in the second part in an amount such that, when combined with the first part, it is present within the disinfecting composition at an concentration ranging from 1.0% to 3.0% by weight.

26. The system of claim 1 wherein the acid is present in the second part in an amount such that, when combined with the first part, the pH of the disinfecting composition is below 5.

27. The system of claim 1 wherein the acid is present in the second part in an amount such that, when combined with the first part, the pH of the disinfecting composition ranges from 1.5 to 5.

28. The system of claim 1 wherein the acid is present in the second part in an amount such that, when combined with the first part, the pH of the disinfecting composition ranges from 2.3 to 3.5

29-30. (Cancelled)

31. The system of claim 1 wherein the oxidizable colorant is a drug and cosmetic colorant, an externally applied drug and cosmetic colorant, a food, drug and cosmetic colorant, or a mixture thereof.

32. The system of claim 30 wherein a single oxidizable colorant is present in the second part.

33. The system of claim 1 wherein the first part and the second part are adapted to be combined in equal volumes.

34. The system of claim 1 wherein both the first part and the second part are in the form of an aqueous solution, emulsion, microemulsion, cream or gel.

35. The system of claim 1 wherein at least one of the first part or the second part is in a non-aqueous or solid form, or is adapted to be diluted by or dissolved in water prior to combination of the first part and the second part.

36. The system of claim 1 wherein the first part, the second part, or both the first and second parts further comprise a textural modifier, wetting agent, thickening agent, skin conditioner, healing agent, film-forming polymer, surfactant, preservative, or a mixture thereof.

37. A disinfecting composition formed by combining the first part and the second part of the two-part disinfecting system of claim 1.

38. (Withdrawn) A method for making a disinfecting composition comprising combining the first part and the second part of the two-part disinfecting system of claim 1.

39. (Withdrawn) The method of claim 38 wherein both the first part and the second part are in the form of an aqueous solution, emulsion, microemulsion, cream or gel.

40. (Withdrawn) The method of claim 38 wherein at least one of the first part or second part is in a non-aqueous or solid form, or is adapted to be diluted by or dissolved in water prior to combination of the first part and the second part.

41. (Withdrawn) The method of claim 40 wherein the non-aqueous or solid form is first diluted with or dissolved in water prior to contact with the other part.

42. (Withdrawn) A method for disinfecting a substrate comprising contacting the substrate with an effective amount of a disinfecting composition formed by mixing the two-part disinfecting system of claim 1.

43. (Withdrawn) The method of claim 42 wherein the substrate is skin or tissue of a warm-blooded animal.

44. (Withdrawn) The method of claim 42 wherein the substrate is a teat of a dairy cow, goat or sheep.

45. (Withdrawn) The method of claim 42 wherein the substrate is a hard surface.

46. (Withdrawn) The method of claim 42 wherein the substrate is a food surface or a surface in contact with food.

47. (Withdrawn) The method of claim 42 wherein the substrate is processing water.

48. (Withdrawn) The method of claim 42 wherein the substrate is cooling tower water.

EVIDENCE APPENDIX

1. Office Action mailed October 1, 2009
2. *In re Wertheim*, 541 F.2d 257, 262, 191 USPQ 90, 96 (CCPA 1976).
3. *Ex parte Parks*, 30 USPQ2d 1234, 1236 (Bd. Pat. App. & Inter. 1993).
4. *In re Reynolds*, 443 F.2d 384, 170 USPQ 94 (CCPA 1971).
5. *In re Smythe*, 480 F. 2d 1376, 178 USPQ 279 (CCPA 1973).
6. *In re Driscoll*, 195 USPQ 434, 438; 562 F.2d 1245, 1249 (1977).
7. *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983).
8. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).
9. *In re Lukach*, 442 F.2d 967, 969, 169 USPQ 795, 796 (CCPA 1971).
10. *In re Gosteli*, 872 F.2d 1008, 1012, 10 USPQ2d 1614, 1618 (Fed. Cir. 1989).
11. US. Patent No. 5,380,518 to Roozdar
12. U. S. Patent No. 6,524,624 to Morelli et al.
13. U.S. Patent No. 6,071,483 to Pastore
14. U.S. Patent No. 6,379,685 to Richter

RELATED PROCEEDINGS APPENDIX

None.